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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jean-Pierre Hermet

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BACHMAN & LAPOINTE, P.C.

900 CHAPEL STREET

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EXAMINER

BELLAMY, TAMIKO D

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/561,382	<b>Applicant(s)</b> HERMET ET AL.	
	<b>Examiner</b> TAMIKO D. BELLAMY	<b>Art Unit</b> 2856	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-33, 35-37, 41-44 and 47 is/are rejected.
- 7) ☒ Claim(s) 34, 38-40, 45 and 46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Objections*

1. Claims 24, 32, and 36-39 are objected to because of the following informalities:
  - a. Claim 24, last line, change "analysed" to --analyzed--.
  - b. Claim 32, line 9, change "analysed" to --analyzed--.
  - c. Claim 32, line 10, change "analused" to --analyzed--.
  - d. Claims 36-39, before the word "sampling" insert—intermediate--. This will make the claim language consistent.Appropriate correction is required.

### *Drawings*

2. The drawings were received on 8/25/09. These drawings are accepted.

### *Claim Objections*

3. Claim 36 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to **further limit the subject matter of a previous claim**. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 24-33, 35-37, 41-44, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weibel et al. (5,627, 346).

Re claim 24, as depicted in fig. 4, Weibel et al. discloses a device for mixing a raw materials (e.g., flour A) from at least two different containers (e.g., component cell (1 and 1')). A common mixing chamber (e.g., mixing hopper 8) is connected to each of the containers (1 and 1'). The samples are drawn in an intermediate sampling chamber (e.g., weighers 4). The raw materials (A) flow by gravity into the mixing chamber (8). The mixed sample is analyzed (e.g., NIR 47). While Weibel et al. does not specifically disclose mixing a plurality of **liquid samples, the device of** Weibel et al. is inherently capable of mixing a liquid. evidence can be found in figs. 1 and 4. If a liquid is placed in a first container (1) The mixing computer (7) can control each weigher (4) to received the exact same amount of liquid (Col. 5, lines 16-45). The functionally of the device as taught by Weibel et al. would operate the same regardless if a liquid or flour is used. Weibel et al. discloses that the device is capable of control directly the metered addition of water and liquid for special mixing tasks (Col. 4, lines 56-61). Replacing the raw material with a liquid would have been obvious to one having ordinary skill in the art, as means of continuously mixing liquids from a plurality of liquid samples continuously in a mixer.

Re claim 25-28, and 33, Weibel et al. discloses the weight amounts are predetermined by a mixing computer (7). Micro-differential weighers (16) are used to draw very small proportions of a sample. It would have been obvious to one having ordinary skill in the art to adjust the programming of the mixer computer to draw a

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predetermined amount of a sample for the purpose of mixing a precise volume of a sample.

Re claim 29, transferring of the samples into the mixing container (8) is initiated by an external action (e.g., force of gravity).

Re claim 30, transferring the samples (A) in to the mixing container is initiated automatically.

Re claim 31, Weibel et al. discloses that as the product flows through the device a self-cleaning action is effected; an a total emptying of all elements can be provided by means of a corresponding programming of the entire control unit (Col. 3, lines 15-21).

Re claims 32, 35 and 36, as depicted in fig. 4, Weibel et al. discloses a device for mixing a raw materials (e.g., flour A) from at least two different containers (e.g., component cell (1 and 1')). A mixing chamber (e.g., mixing hopper 8) is connected to each of the containers (1 and 1'). At least one intermediate sampling chamber (e.g., weighers 4) is between each container (1, 1') and the mixer (8). The device is configured in a vertical arrangement. The mixer (8) is under the intermediate sampling container (4) and connected to the intermediate sampling chamber (4). The raw materials (a) flow by gravity into the mixing chamber (8). While Weibel et al. does not specifically disclose mixing a plurality of **liquid samples**, **the device of Weibel et al.** is inherently capable of mixing a liquid. evidence can be found in figs. 1 and 4. If a liquid is placed in a first container (1) The mixing computer (7) can control each weigher (4) to received the exact same amount of liquid (Col. 5, lines 16-45). The functionally of the device as

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taught by Weibel et al. would operate the same regardless if a liquid or flour is used.

Weibel et al. discloses that the device is capable of control directly the metered addition of water and liquid for special mixing tasks (Col. 4, lines 56-61). Replacing the raw material with a liquid would have been obvious to one having ordinary skill in the art, as means of continuously mixing liquids from a plurality of liquid samples continuously in a mixer.

Re claim 37, as depicted in fig. 4, the mixing chamber (8) is associated in a removable manner.

Re claim 41, as depicted in fig. 1, Weibel et al. discloses a non-returning valve (3).

Re claims 42 and 43, Weibel et al. discloses that as the product flows through the device a self-cleaning action is effected; an a total emptying of all elements can be provided by means of a corresponding programming of the entire control unit (Col. 3, lines 15-21).

Re claim 44, Weibel et al. discloses an analyzer (e.g., NIR 47).

Re claim 47, the samples contained in the mixer (8) are transferred to the analyzer device (47) (See figs. 1 and 4)(Col. 6, lines 52-60).

#### ***Allowable Subject Matter***

6. Claims 34, 38-40, 45, and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Response to Arguments***

7. Applicant's arguments with respect to claims 24-47 have been considered but are moot in view of the new ground(s) of rejection. It is the examiners position that claims 24-33, 35-37, 41-44, and 47 are not patentable in view of the newly applied art of Weibel et al. (5,627, 346).

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAMIKO D. BELLAMY whose telephone number is (571)272-2190. The examiner can normally be reached on Monday - Friday 8:00 AM to 4:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hezron Williams/  
Supervisory Patent Examiner, Art Unit  
2856

Tamiko Bellamy  
/TB/  
November 20, 2009